

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 21 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0205-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DANNY E. HICKS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200802156

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Danny E. Hicks

Buckeye
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Danny Hicks was convicted in 2009 of aggravated assault, a class three felony, in exchange for the dismissal of the allegation of a dangerous offense and a second count of aggravated assault. The trial court sentenced him to a presumptive, 3.5-year prison term. In October 2009, after the court granted trial counsel's motion to withdraw, Hicks filed a pro se notice of post-

conviction relief. His new attorney filed a notice of completion of post-conviction review, citing *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995), and stating he and Hicks “disagree on what colorable claims, if any, are supported by the evidence and facts.” Hicks then filed a pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. He now challenges the court’s denial of that petition.¹ “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse of discretion here.

¶2 On review, Hicks argues, inter alia, that the trial court abused its discretion by denying relief on his claims of ineffective assistance of all of his previous attorneys and by failing to address all of his claims. In addition to the many arguments he raises, some of which are incomprehensible,² Hicks also asserts he should be allowed to

¹Although Hicks filed this petition for review in propria persona, he refers to his nephew, J. Edward Petrik, as his “attorney-in-fact.” He does so despite the trial court’s repeated admonitions that Petrik is not his attorney and has no standing before the court, and the state has no obligation to respond to pleadings filed by Petrik.

²For example, without more, Hicks directs this court as follows: “Please refer to the”. He also asserts the following argument:

Judge Pro Tem Robert C. Brown has brought the appearance of impropriety and lack of impartiality by adopting a new interpretation of counsel’s “Notice of Completion” (no colorable claims) that he expressed for the first time at the hearing on 1/19/2011, to a new, debatable position – one that favors Mr. Villarreal’s position - as is expressed in his ruling on the PCR petition (a colorable claim exists)? The court has obviously become aware of the merit of the petitioner’s argument found in his 5/25/2011 pleading, as well as in the PCR petition. It appears to be basic

withdraw from the plea agreement, an argument he apparently did not raise below. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Hicks's petition. The court denied relief in a detailed and thorough minute entry order that identified Hicks's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to restate it here.³ See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 In addition, we reject Hicks's challenge to the trial court's denial of his "Objection to Representation on Grounds of Deception, Fraud and Conflict of Interest: Motion to Conduct Inquiry; Motion to Substitute Counsel" (the "objection"), a pleading the court characterized as "moot" because it had, that same day, already denied Hicks's petition for post-conviction relief. Hicks asserts that, because the order denying the

"cheating!" The court has corrected its error, while failing to acknowledge the prejudicial effect of its initial erroneous interpretation on the petitioner. The appearance of extrajudicial communication is also questionable? Is this a valid ground for recusal?

³By so ruling, we also deny relief on Hicks's claim that the trial court failed to acknowledge "an enormous number of [his] claims."

objection shows an earlier filing time than the order denying post-conviction relief, the court's apparent reliance on its earlier ruling denying post-conviction relief was misplaced. We infer the court knew if it had already denied post-conviction relief before it ruled on the objection; if the court stated it had done so, we will so presume, regardless of the filing time indicated on the orders.

¶5 Moreover, to the extent Hicks asks us to consider claims raised for the first time on review, including his request that we consider exhibits he either did not submit to the trial court or that he anticipates submitting to this court in “separate mailing[s],” including evidence “as of yet [] to be disclosed,” we will not address such claims on review.⁴ Because these claims rely on evidence that was not raised in the trial court, we decline to address them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review any issue on which trial court did not have opportunity to rule); *see also* Ariz. R. Crim. P. 32.9(c) (aggrieved party may petition appellate court “for review of the actions of the trial court”). We also reject Hicks's argument regarding an apparent error in the date stamp affixed to his petition for post-conviction relief. Because the court addressed the issues raised in his petition without mentioning timeliness, we infer it found the petition had been timely filed, and thus conclude Hicks was not prejudiced by any asserted error. Finally, to the extent Hicks requests we grant an oral argument, we deny that request. *See* Ariz. R. Crim. P. 31.14(a).

⁴This includes Hicks's unsupported claim that a four-page document “was fraudulently removed [from the objection] by the [trial] court.”

¶6 Because the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge